

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

PLYMOUTH COUNTY

SJC No. DAR-  
APPEALS COURT  
No. 2017-P-1460

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COMMONWEALTH OF MASSACHUSETTS,  
Plaintiff-Appellee,

*vs.*

JAMIE B. JOHNSON,  
Defendant-Appellant.

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ON APPEAL FROM JUDGMENTS OF  
THE PLYMOUTH SUPERIOR COURT

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DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

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December 2017

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

PLYMOUTH COUNTY

No. DAR-  
No. 2017-P-1460

COMMONWEALTH

*vs.*

JAMIE B. JOHNSON

**APPLICATION FOR DIRECT APPELLATE REVIEW**

Under Mass. R. App. P. 11, the defendant requests direct appellate review of the judgments against him in Plymouth Superior Court no. 1483CR00154.

The facts, briefly: As a condition of his probation in a prior unrelated criminal matter out of Quincy District Court, the defendant was ordered to wear a Global Positioning System (GPS) device on his ankle. Almost a year after his probation was terminated and the device removed, the government mined, as part of a criminal investigation, six months' worth of historical locational data collected by the GPS device.

The defendant's appeal thus raises a constitutional question of first impression that requires a final determination by the full Supreme Judicial Court: whether a warrantless search of a person's long-term historical GPS locational data—conducted for law enforcement purposes wholly unrelated to any legitimate purpose of probation—violates the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights.

The grounds for this application are set forth in greater detail in the accompanying memorandum of law.

Respectfully submitted,  
JAMIE B. JOHNSON  
By his attorney,

*/s/ Tim St. Lawrence*

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December 1, 2017

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

PLYMOUTH COUNTY

No. DAR-  
No. 2017-P-1460

COMMONWEALTH

*vs.*

JAMIE B. JOHNSON

**MEMORANDUM OF LAW IN SUPPORT OF  
APPLICATION FOR DIRECT APPELLATE REVIEW**

**I. Statement of Prior Proceedings**

On March 14, 2014, a Plymouth County grand jury returned a nineteen count indictment against the defendant, Jamie B. Johnson, charging him with five counts of breaking and entering in the nighttime with the intent to commit a felony; four counts of breaking and entering in the daytime with the intent to commit a felony; eight counts of larceny over \$250; one count of

larceny under \$250; and one count of criminal attempt.

(A.1, 5-7).<sup>1</sup>

Mr. Johnson then moved to suppress evidence on the ground that the warrantless search of long-term historical locational data, collected by a GPS device that was affixed to his ankle as a condition of probation in a prior unrelated criminal matter, violated his constitutional rights under the Fourth Amendment and art. 14. (A.3-4, 10). After a hearing at which the parties stipulated to the facts, Judge Cornelius J. Moriarty, II denied the motion in the appended “Memorandum of Decision and Order on Defendant’s Motion to Suppress.” (A.10-13).

On July 21, 2016, after a two-day bench trial before Judge Jeffrey A. Locke, Mr. Johnson was convicted of two counts of breaking and entering in the

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<sup>1</sup> The docket entries and the motion judge’s memorandum of decision and order on the motion to suppress are appended to this application, which appendix is cited herein by page number as “(A.\_\_\_)”.

daytime, two counts of larceny over \$250, one count of breaking and entering in the nighttime, and one count of larceny under \$250. (A.5-7). Mr. Johnson was acquitted of the other thirteen charges. (A.5-7).

On the conviction of breaking and entering in the nighttime, Mr. Johnson was sentenced to state prison for not less than ten years or more than thirteen years; on the convictions of breaking and entering in the daytime, he was sentenced to state prison for not less than nine years or more than ten years. (A.8). All of these three prison sentences were ordered to run concurrently with each other and with a sentence that Mr. Johnson was then serving upon a Norfolk County case. (A.8). On the three larceny convictions, the judge ordered concurrent terms of three years probation, to commence from and after the state prison sentences. (A.7).

Mr. Johnson timely appealed and the case entered in the Appeals Court on November 10, 2017. (A.8-9).

## **II. Statement of Facts Relevant to the Appeal**

The issue raised in this application for direct appellate review relates to the denial of a motion to suppress.<sup>2</sup> The motion judge (Moriarty, II, J.) issued the following findings of fact:

On April 10, 2012, Johnson appeared in the Quincy District Court for a violation of probation hearing. The basis for the surrender hearing was a new charge pending in the Framingham District Court. Johnson waived his right to a hearing and stipulated to the violation. During the hearing, Johnson's attorney asked the court, Coven, J., to extend Johnson's probation and add a condition that he be subject to a Global Position System Monitoring Device ("GPS"). Judge Coven accepted the recommendation and ordered that Johnson's probation be extended and that he be subject to GPS monitoring for an additional six months.

On September 2, 2013, Johnson was arrested near the scene of a housebreak in Randolph. It came to the attention of Randolph Police Detective

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<sup>2</sup> Mr. Johnson may raise additional issues in his main brief on appeal.

Gabriel Pantazelos ("Pantazelos") that Johnson had at one time been outfitted with a GPS tracking device. He decided to contact the Commissioner of Probation and obtain records of Johnson's location at various times to determine if they matched up with unsolved housebreaks on the South Shore. To that end, he contacted Marshfield Police Detective Kim Jones ("Jones") and suggested she contact the probation department and look into Johnson's whereabouts. Thereafter, the Marshfield police and two probation officers reviewed the record of Johnson's travels into Marshfield, Hanson and Pembroke. Once this information was developed, Jones cross-referenced it with recent break-ins in those three towns and discovered that Johnson was at the scene of the housebreaks at the time of the alleged breaks. Johnson was then indicted and charged with the aforementioned crimes. Johnson now asks the court suppress the GPS evidence against him on the basis that the warrantless search of his probation file violated his constitutional rights to be free from unreasonable searches.

(A.10-11).



### III. Issue of Law Raised by the Appeal

Whether a warrantless search of a person's long-term historical GPS locational data—conducted for law enforcement purposes wholly unrelated to any legitimate purpose of probation—violates the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights.

The defendant preserved this issue for the Court's review by raising it in the trial court in his motion to suppress evidence. See *Commonwealth v. Whelton*, 428 Mass. 24, 25-26 (1998).

#### IV. Argument

The mining by the government of Mr. Johnson's long-term historical GPS locational data was a search in the constitutional sense. And because this search was conducted without a warrant and without probable cause, it was unlawful under the Fourth Amendment and art. 14. As a result, the judge erred in denying the motion to suppress.

“Under both the Federal and Massachusetts Constitutions, a search in the constitutional sense occurs when the government's conduct intrudes on a person's reasonable expectation of privacy. The measure of the defendant's expectation of privacy is (1) whether the defendant has manifested a subjective expectation of privacy in the object of the search, and (2) whether society is willing to recognize that expectation as reasonable.” *Commonwealth v. Augustine*, 467 Mass. 230, 241-42 (2014) (*Augustine I*), S.C., 472 Mass. 448 (2015) (citations and quotation marks omitted).

The motion judge here asserted that “society does not appear to recognize that Johnson’s expectation of privacy in his probation records is reasonable,” (A.12), because, under G. L. c. 276, § 90, a probation officer’s records “may at all times be inspected by police officials of the towns of the commonwealth.” But that statute was enacted at a time (1880) when society could have scarcely envisioned the use by probation officers of GPS monitoring devices that “generate a comprehensive record of a person’s public movements” over an extended period of time. *United States v. Jones*, 132 S. Ct. 945, 955–956 (2012) (Sotomayor, J., concurring). In addition, empirical research does not support the view that society would not recognize as reasonable Mr. Johnson’s subjective belief that he retained a privacy interest in the long-term data collected by the GPS device. *Commonwealth v. Johnson*, 91 Mass. App. Ct. 296, 323 (2017) (Wolohojian, J.,

dissenting), citing Kugler and Strahilevitz, Actual Expectations of Privacy, Fourth Amendment Doctrine, and the Mosaic Theory, 2015 Sup. Ct. Rev. 205, 209–210 (2016).<sup>3</sup>

Moreover, in the context of historical GPS locational data, “[t]he reasonableness of an individual’s privacy expectation is directly tied to the length of time covered by the GPS data.” *Johnson*, 91 Mass. App. Ct. at 319 (Wolohojian, J., dissenting),

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<sup>3</sup> In *Johnson*, the Appeals Court was asked to determine whether the mining of two months’ worth of historical GPS locational data constituted a search in the constitutional sense, where the data was obtained by a GPS device affixed to the defendant as a condition of his pre-trial release. *Id.* at 297. (Incidentally, the defendant in *Johnson* is the defendant in this case.) In *Johnson*, though, unlike here, the historical locational data was searched while the defendant was still subject to the condition of GPS monitoring. *Id.* at 302. Justice Meade wrote the majority opinion, at 296, Justice Grainger wrote a concurring opinion, at 309, and Justice Wolohojian wrote a dissenting opinion at 314. The majority concluded that the mining of the GPS data was not a search in the constitutional sense. *Id.* at 302–307. On September 14, 2017, the Supreme Judicial Court denied Mr. Johnson’s application for further appellate review.

citing *Commonwealth v. Estabrook*, 472 Mass. 852, 859 (2015) (“[T]he salient consideration is the length of time for which a person’s” locational data is requested). Here, the government mined **six months’** worth of data almost a year after Mr. Johnson’s probation had been terminated. (A.11). When GPS “tracking takes place over extended periods of time ... the cumulative nature of the information collected implicates a privacy interest on the part of the individual who is the target of the tracking.” *Augustine I*, 467 Mass. at 253 (2014). Cf. *Johnson* at 319 (Wolohojian, J., dissenting) (“Wherever the line between longer-term and short-term might be drawn, we are well beyond it in this case because at least two months’ worth of the defendant’s historical GPS data was requested and searched.”).

The motion judge also asserted that “the defendant is a probationer who has a diminished expectation of

privacy.” (A.13). But Mr. Johnson was no longer on probation when the search occurred and so his expectation of privacy in the historical GPS locational data was no longer diminished. See *Commonwealth v. Buccella*, 434 Mass. 473, 485 (2001) (“It would appear reasonable to expect that a government agency, to which a citizen is required to submit certain materials, will use those materials solely for the purposes intended and not disclose them to others in ways that are unconnected with those intended purposes.”). A former probationer, like Mr. Johnson, should not have to live the rest of his life with a diminished expectation of privacy in an extended period of his past public (and private) movements. Cf. *Augustine I*, 467 Mass. at 249 (historical CSLI has the potential to track a person’s location in constitutionally protected areas.). This is especially so here since Mr. Johnson was never put on notice that the historical locational data captured by

the GPS device could forever be accessed by the government for any purpose whatsoever. Cf. *Johnson* at 314 (Grainger, J., concurring) (“I note that the specific issue raised here can be averted in future cases with a colloquy at the bail hearing and detailed written notice, each explaining the scope of monitoring that will be performed.”).

Relatedly, the motion judge asserted that “the defendant consented to being monitored by a GPS device.” (A.13). But the defendant’s consent to wear a GPS device as a condition of his probation did not extinguish his expectation of privacy in the long-term historical GPS locational data:

Under art. 14, the fact that an individual voluntarily carries (or, in this case, wears) an electronic device that transmits and/or collects detailed locational data does not mean that, as a matter of law, he no longer has a reasonable expectation of privacy in his whereabouts as reflected in that data. The application of this proposition can be seen in both *Augustine*, 467 Mass. 230, and *Estabrook*, 472 Mass. 852. In both cases, the defendant voluntarily carried a cell

phone that captured and transmitted his locational data, and in both cases the court nonetheless held that he retained a reasonable privacy interest in the data collected.

*Johnson* at 319-320 (Wolohojian, J., dissenting). What is more, “the coercive quality of the circumstance in which a defendant seeks to avoid incarceration by obtaining probation on certain conditions makes principles of voluntary waiver and consent generally inapplicable.” *Commonwealth v. LaFrance*, 402 Mass. 798, n.3 (1988).

In sum, the judge erred in denying the motion to suppress because the mining by the government of Mr. Johnson’s long-term historical GPS locational data was a search in the constitutional sense that was conducted without a warrant and without probable cause in violation of the Fourth Amendment and art. 14.



**V. Statement of Reasons Why Direct Appellate Review is Appropriate**

This case presents a novel issue about privacy in the digital age by asking whether a warrantless search of a person's long-term historical GPS locational data—conducted for law enforcement purposes wholly unrelated to any legitimate purpose of probation—violates the Fourth Amendment or art. 14. Given the burgeoning use of GPS monitoring as a condition of release in the courts of the commonwealth and because a similar issue fractured the Appeals Court earlier this year in *Commonwealth v. Johnson*, 91 Mass. App. Ct. 296, 309 (2017), this issue will likely continue to appear before Massachusetts courts. A final word from the Supreme Judicial Court is thus required.

For these reasons and for those reasons stated in the Argument section above, Mr. Johnson respectfully requests that the Court grant his application for direct appellate review.

Respectfully submitted,  
JAMIE B. JOHNSON  
By his attorney,

*/s/ Tim St. Lawrence*

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December 1, 2017

### **Certificate of Compliance**

I hereby certify that, to the best of my knowledge, this application for direct appellate review complies with the relevant rules of court pertaining to the preparation and filing of applications for direct appellate review, including, but not limited to, compliance with all provisions of Massachusetts Rules of Appellate Procedure 11, 13 & 20.

*/s/ Tim St. Lawrence*  
Timothy St. Lawrence

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# APPENDIX

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**1483CR00154 Commonwealth vs. Johnson, Jamie Bill**

<b>Case Type</b>	Indictment	<b>Initiating Action:</b>	B&E BUILDING NIGHTTIME FOR FELONY c266 §16
<b>Case Status</b>	Open	<b>Status Date:</b>	03/14/2014
<b>File Date</b>	03/14/2014	<b>Case Judge:</b>	
<b>DCM Track:</b>	B - Complex	<b>Next Event:</b>	

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

**Docket Information**

<b>Docket Date</b>	<b>Docket Text</b>	<b>File Ref Nbr.</b>	<b>Image Avail.</b>
03/14/2014	Indictment returned	1	
03/14/2014	RE Offense 5:Enhancement attempt to Break and Enter in the Nighttime		
04/08/2014	Habeas corpus for Deft at Norfolk House of Correction (Dedham) to appear on April 9, 2014 @ Brockton	2	
04/09/2014	Deft arraigned before Court		
04/09/2014	Notice of assignment of counsel	3	
04/09/2014	RE Offense 1:Plea of not guilty		
04/09/2014	RE Offense 2:Plea of not guilty		
04/09/2014	RE Offense 3:Plea of not guilty		
04/09/2014	RE Offense 4:Plea of not guilty		
04/09/2014	RE Offense 5:Plea of not guilty		
04/09/2014	RE Offense 6:Plea of not guilty		
04/09/2014	RE Offense 7:Plea of not guilty		
04/09/2014	RE Offense 8:Plea of not guilty		
04/09/2014	RE Offense 9:Plea of not guilty		
04/09/2014	RE Offense 10:Plea of not guilty		
04/09/2014	RE Offense 11:Plea of not guilty		
04/09/2014	RE Offense 12:Plea of not guilty		
04/09/2014	RE Offense 13:Plea of not guilty		
04/09/2014	RE Offense 14:Plea of not guilty		
04/09/2014	RE Offense 15:Plea of not guilty		
04/09/2014	RE Offense 16:Plea of not guilty		
04/09/2014	RE Offense 17:Plea of not guilty		
04/09/2014	RE Offense 18:Plea of not guilty		
04/09/2014	RE Offense 19:Plea of not guilty		
04/09/2014	Defendant ordered to recognize in the sum of \$500,000.00 with surety or \$50,000.00 CASH without prejudice		
04/09/2014	Bail warning read		
04/09/2014	Assigned to Track "B" see scheduling order		
04/09/2014	Tracking deadlines Active since return date		
04/09/2014	Case Tracking scheduling order (Cornelius Moriarty, Justice) mailed 4/9/2014	4	
04/09/2014	Notice of unpaid counsel fees sent to Dept of Revenue and Registry of MV on 4/9/14	5	
04/09/2014	Case continued to May 7, 2014 by agreement for pre-trial conference (Moriarty,J) R. Griffin,court reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/09/2014	Case continued to August 22, 2014 by agreement for pre-trial hearing (Moriarty,J) R. Griffin, court reporter		
04/09/2014	Special mittimus on indictment issued	7	
04/09/2014	Notice to DA of certificate of compliance due by 6/11/14	6	
05/05/2014	Joint MOTION by Deft: to continue: filed and ALLOWED. (J. Walsh, ac/m)	9	
05/05/2014	Case continued to May 21, 2014 by agreement re: Pretrial conference. (J. Walsh, ac/m) R. Griffin, court reporter.		
05/21/2014	Pre-trial conference report filed	10	
05/21/2014	Case continued to June 18,2014 by agreement for filing motions (Moriarty,J) C.Johnson, court reporter		
06/18/2014	Case continued to July 10,2014 by agreement for status and bail (Moriarty,J) R Griffin court reporter		
06/25/2014	Joint MOTION to advace case for bail hearing; Filed and Allowed (Moriarty,J) copies mailed June 26,2014	11	
06/25/2014	Case continued to June 27,2014 by agreement for hearing re: bail(Moriarty,J) R Griffin court reporter		
06/30/2014	Habeas corpus for Deft at Norfolk HOC to appear in Brockotn on 7/10/14	12	
07/10/2014	Defendant's ORAL MOTION for For reduction of bail; DENIED (Moriarty, J)		
07/10/2014	Continued to 8/11/2014 for hearing on Filing of motion by agreement (Cornelius Moriarty,III Justice) R Griffin, court reporter		
08/11/2014	Case continued to September 3, 2014 by agreement for filing motion(Ullmann,J) R Griffin court reporter		
08/22/2014	Case continued to September 3, 2014 by agreement re: filing motions. (Ullmann, J.) R. Griffin, court reporter.		
09/03/2014	MOTION by Deft: for discovery: filed and allowed without opposition. The Commonwealth concludes relevance but does not know whether requested item exists in written form (Ullmann,J.)	13	
09/03/2014	MOTION by Deft: for third party records: filed and ALLOWED without opposition. (Ullmann, J.)	14	
09/08/2014	Case continued to October 14, 2014 by agreement re: motions. (Ullmann, J.) R. Griffin, court reporter.		
09/10/2014	Order for Production of Records issued to the Office of the Commissioner of Probation. Records to be produced by 10/14/14	15	
09/18/2014	MOTION by Deft: For Funds for Investigator	16	
09/25/2014	Rule IX MOTION by Commonwealth:for production of records maintained by an employee of the commissioner of probation	17	
10/14/2014	MOTION (P#16) allowed (Beverly J. Cannone, Justice).		
10/14/2014	Case continued to November 18, 2014 by agreement re: status of records. (Cannone, J.) R. Griffin, court reporter.		
10/14/2014	MOTION (P#17) allowed (Beverly J. Cannone, Justice).		
10/29/2014	Order for Production of Records issued to the Office of the Commissioner of Probation. Records to be produced by 11/18/14	18	
10/31/2014	Notice of assignment of counsel (appointing Atty Ian Davis)	19	
11/18/2014	MOTION by Deft: trial court rule IX motion for subpoena of probation officers	21	
11/18/2014	MOTION by Deft: to suppress warrantless search	22	
11/18/2014	Case continued to February 5,2015 by agreement for motion to suppress (Cannone,J) R. Griffin, court reporter		
11/18/2014	Trial Court Rule IX Order for subpoena of probation officers: Barbara McDonough (Cannone, J.)	23	
11/18/2014	Trial Court Rule IX Order for subpoena of probation officers: John Lucci	24	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/18/2014	MOTION (P#21) allowed (Beverly J. Cannone, Justice). Copies mailed 11/20/2014		
12/23/2014	Case continued to January 16,2015 for conference third criminal session (Leo P Foley Asst Clerk)		
12/24/2014	ORDER for dispositional conference scheduled for January 16,2015 at 10:00AM before Judge Ball third criminal session(Leo P Foley Asst Clerk) copies mailed December 24,2014	25	
01/13/2015	Habeas corpus for Deft at Suffolk House of Correction (South Bay) to appear on 1/16/15 @ Brockton	27	
01/16/2015	After Lobby conference, defenadnt declines dispositional hearing (Ball, J) N. Gagnon, court reporter		
01/22/2015	Commonwealth's RULE IX MOTION for access to records maintained by the commissioner of probation	28	
01/30/2015	Habeas corpus for Deft at Suffolk House of Correction (South Bay) to appear February 5,2015 @ Brockton	29	
02/05/2015	Case continued to February 13,2015 by agreement for set date for motion to suppress (McGuire,J) R Griffin court reporter		
02/13/2015	P(#28) Commonwealth's RULE IX MOTION for access to records maintained by the commissioner of probationL allowed (Moriarty, J)		
02/13/2015	Order on teh Commonwealths motion for access to records in th epossession of the commissioner of probation (Moriarty, J)	30	
02/13/2015	Case continued to March 19, 2015 by agreement for motion to suppress (Moriarty, J) R. Griffin, court reporter		
02/18/2015	Habeas corpus for Deft at Suffolk House of Correction (South Bay) to appear in Brockton on March 19.2015	31	
03/19/2015	MOTION by Commonwealth:to subpoena a probation officer: filed and allowed. (Moriarty, J.)	31.1	
03/19/2015	Case continued to May 13, 2015 by agreement re: motion to suppress. (Moriarty, J.) R. Griffin, court reporter.		
04/01/2015	Findings of fact, rulings of law, and order on defendant's motion to suppress evidence	32	
05/12/2015	Habeas corpus for Deft at Suffolk House of Correction (South Bay) to appear in Brockton on May 12.2015	33	
05/13/2015	Case continued to 6/18/15 for hearing on the deft's motion to suppress at request of the commonwealth		
05/13/2015	Habeas corpus for Deft at Suffolk House of Correction (South Bay)	34	
06/18/2015	Case continued to July 31, 2015 at the request of the defendant for a hearing on the defendant's motion to suppress. (McGuire, J.) R. Griffin, court reporter.		
07/29/2015	Habeas corpus for Deft at Suffolk House Of Correction(Southbay) to appear July 31,2015 in Brockton	35	
07/30/2015	MOTION by Commonwealth: to advance and continue filed; ALLOWED continued to September 11,2015 (Vear,J)	36	
07/30/2015	Case continued to September 11,2015 by agreement for motion to suppress (Veary,J) R. Griffin, court reporter		
09/09/2015	Commonwealth 's Motion to advance and continue	38	
09/09/2015	Endorsement on Motion to advance and continue, (#38.0): ALLOWED		
09/09/2015	Case continued to to October 22, 2015 for status and scheduling. (C. Johnson, court reporter.)		
09/09/2015	Event Result: The following event: Hearing scheduled for 09/11/2015 09:00 AM has been resulted as follows: Result: Not Held Reason: Request of Commonwealth		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/22/2015	Event Result: The following event: Conference to Review Status scheduled for 10/22/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled Case continued to December 1,2015 by agreement for possible disposition (McGuire,J) R. Griffin, court reporter		
11/30/2015	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 12/01/2015 09:00 AM Conference to Review Status.	39	
12/01/2015	Case continued to 12/11/2015 by agreement for possible disposition @ 2:00PM.  R. Griffin, court reporter.		
12/10/2015	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 12/11/2015 02:00 PM Conference to Review Status.	40	
12/11/2015	Case continued by agreement to 1/26/2016 for Motion To Suppress. (McGuire,J.), R. Griffin.		
01/05/2016	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 01/26/2016 09:00 AM Evidentiary Hearing on Suppression. to be here by 8:30AM  Applies To: Johnson, Jamie B (Defendant); MCI - Cedar Junction (at Walpole) (Holding Institution)	41	
01/26/2016	Commonwealth's Memorandum in opposition to defendant's motion to suppress GPS evidence	42	
01/26/2016	Case continued to February 10,2016 by agreement for motion to suppress (Moriarty,J) R Griffin court reporter		
01/27/2016	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 02/10/2016 09:00 AM Evidentiary Hearing on Suppression. be here by 8:30AM  Applies To: Johnson, Jamie B (Defendant); MCI - Cedar Junction (at Walpole) (Holding Institution)	43	
02/10/2016	Motion to suppress taken under advisement by Moriarty, J. Case continued to March 16, 2016 re: status and trial assignment. (Moriarty, J.) R. Griffin, court reporter		
02/10/2016	Jamie B Johnson's Memorandum in support of motion to suppress warrantless search (supplemental)	43.1	
03/14/2016	Defendant 's Motion to continue	44	
03/15/2016	Event Result: The following event: Conference to Review Status scheduled for 03/16/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant		
03/15/2016	Endorsement on Motion to continue, (#44.0): ALLOWED Continued to April 11, 2016 for trail assignment at the request of the defendant.		
03/16/2016	Endorsement on Motion to suppress warrantless search, (#22.0): DENIED		
03/16/2016	MEMORANDUM & ORDER:  on defendant's motion to suppress	45	<a href="#">Image</a>
03/16/2016	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 03/16/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled		
04/11/2016	Event Result: The following event: Trial Assignment Conference scheduled for 04/11/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled		
04/11/2016	Notice of trial assignment to 4th session (McGuire,J)	46	
04/12/2016	Document:  Notice to Appear for Final Pretrial Sent On: 04/12/2016 09:36:22	47	
04/12/2016	Notice sent to counsel & DA of July 18,2016 trial in 4th session	48	
06/24/2016	CASE AND RECORDS SENT TO PLYMOUTH FOR TRIAL		
07/08/2016	Attorney Ian Thomas Davis, Esq.'s motion to withdraw as counsel of record for party  Applies To: Johnson, Jamie B (Defendant)	50	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/13/2016	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/14/2016 09:00 AM Final Pre-Trial Conference.	49	
07/14/2016	Case continued to July 19, 2016 at 9:30AM for jury waived trial (Locke, J.) A.M. McDonald, court reporter		
07/14/2016	Endorsement on Motion to withdraw, (#50.0): DENIED After hearing, DENIED. Defendant has not articulated good cause for discharge in counsel on the "eve of trial". Attorney Davis appears to have thoroughly and appropriately represented the defendant's legal interests throughout the pretrial proceedings.  Applies To: Johnson, Jamie B (Defendant)		
07/14/2016	Pro Se Defendant 's Request for new counsel  Applies To: Johnson, Jamie B (Defendant)	51	
07/14/2016	Witness list  Applies To: Commonwealth (Prosecutor)	52	
07/14/2016	Waiver of trial by jury  filed, after hearing, ALLOWED. (Locke, J.)  Applies To: Commonwealth (Prosecutor)	53	
07/18/2016	Event Result: The following event: Jury Trial scheduled for 07/18/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: Request of Defendant		
07/18/2016	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/19/2016 09:30 AM Jury Waived Trial.	54	
07/18/2016	Records rec'd from Commissioner of Probation		
07/19/2016	Case continued to July 21, 2016 at 9:00AM for trial (Locke, J.) FTR		
07/19/2016	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/21/2016 09:00 AM Jury Waived Trial.	55	
07/21/2016	Jury waived trial continues before Locke, J.		
07/21/2016	Defendant 's Motion for required finding	56	
07/21/2016	Defendant's sentencing memorandum	57	
07/21/2016	Endorsement on Motion for required finding, (#56.0): Other action taken After hearing, allowed as to counts 1, 2, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19- otherwise denied.		
07/21/2016	Offense Disposition: Charge #1 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A  Charge #2 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A  Charge #3 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A  Charge #4 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A  Charge #5 ATTEMPT TO COMMIT CRIME c274 §6 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		



Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Charge #6 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #7 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #8 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #9 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #10 B&E BUILDING DAYTIME FOR FELONY c266 §18 Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A		
	Charge #11 LARCENY UNDER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A		
	Charge #12 B&E BUILDING DAYTIME FOR FELONY c266 §18 Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A		
	Charge #13 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Guilty Finding Judge: Locke, Hon. Jeffrey A		
	Charge #14 B&E BUILDING DAYTIME FOR FELONY c266 §18 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #15 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #16 B&E BUILDING DAYTIME FOR FELONY c266 §18 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #17 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
	Charge #18 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Charge #19 LARCENY OVER \$250 c266 §30(1) Date: 07/21/2016 Method: Jury Waived Trial Code: Dismissed Judge: Locke, Hon. Jeffrey A		
07/21/2016	Defendant sentenced: Sentence Date: 07/21/2016 Judge: Locke, Hon. Jeffrey A  Charge #: 3 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 State Prison Sentence State Prison Sentence-Not Less Than: 10 Years, 0 Months, 0 Days  State Prison Sentence-Not More Than: 13 Years, 0 Months, 0 Days  Served Primary Charge  Charge #: 10 B&E BUILDING DAYTIME FOR FELONY c266 §18 State Prison Sentence State Prison Sentence-Not Less Than: 10 Years, 0 Months, 0 Days  State Prison Sentence-Not More Than: 12 Years, 0 Months, 0 Days  Served Concurrently  Charge #: 12 B&E BUILDING DAYTIME FOR FELONY c266 §18 State Prison Sentence State Prison Sentence-Not Less Than: 10 Years, 0 Months, 0 Days  State Prison Sentence-Not More Than: 12 Years, 0 Months, 0 Days  Served Concurrently  Committed to MCI - Cedar Junction (at Walpole)  Miscellaneous Options Further Orders of the Court: Sentence on offenses 003, 010 and 012 are to run concurrent with Norfolk Superior Court case that defendant is presently serving.		
07/21/2016	Defendant sentenced: Sentence Date: 07/21/2016 Judge: Locke, Hon. Jeffrey A  Charge #: 4 LARCENY OVER \$250 c266 §30(1) Charge #: 11 LARCENY UNDER \$250 c266 §30(1) Charge #: 13 LARCENY OVER \$250 c266 §30(1) Financials Docket Type Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00  Probation Probation Type: Risk/Need Probation Duration: 3 Years, 0 Months, 0 Days  Probation from and after- Terms- Drug and alcohol treatment, random screens and GPS monitoring  Victim witness fee, probation supervision fee and GPS fee assessed. (Locke, J.)		
07/21/2016	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.		
07/21/2016	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.	58	
07/21/2016	Issued on this date:  Mitt For Sentence (First 6 charges) Sent On: 07/21/2016 13:39:11	59	
07/21/2016	Event Result: The following event: Jury Waived Trial scheduled for 07/21/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled (Locke, J.) FTR		
07/21/2016	Disposed for statistical purposes		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/21/2016	<p>Defendant sentenced: Revision Sentence Date: 07/21/2016 Judge: Locke, Hon. Jeffrey A</p> <p>Charge #: 3 B&amp;E BUILDING NIGHTTIME FOR FELONY c266 §16 State Prison Sentence State Prison Sentence-Not Less Than: 10 Years, 0 Months, 0 Days</p> <p>State Prison Sentence-Not More Than: 13 Years, 0 Months, 0 Days</p> <p>Served Primary Charge</p> <p>Charge #: 10 B&amp;E BUILDING DAYTIME FOR FELONY c266 §18 State Prison Sentence State Prison Sentence-Not Less Than: 9 Years, 0 Months, 0 Days</p> <p>State Prison Sentence-Not More Than: 10 Years, 0 Months, 0 Days</p> <p>Served Concurrently</p> <p>Charge #: 12 B&amp;E BUILDING DAYTIME FOR FELONY c266 §18 State Prison Sentence State Prison Sentence-Not Less Than: 9 Years, 0 Months, 0 Days</p> <p>State Prison Sentence-Not More Than: 10 Years, 0 Months, 0 Days</p> <p>Served Concurrently</p> <p>Committed to MCI - Cedar Junction (at Walpole)</p> <p>Miscellaneous Options Further Orders of the Court: Sentence on offenses 003, 010 and 012 are to run concurrent with Norfolk Superior Court case that defendant is presently serving.</p>		
07/28/2016	<p>Notice of appeal filed</p> <p>Applies To: Johnson, Jamie B (Defendant)</p>	60	
07/28/2016	<p>Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant</p> <p>Applies To: Johnson, Jamie B (Defendant)</p>	61	
08/10/2016	<p>Notice to Judge re: notice of appeal filed</p> <p>Applies To: Event Judge: Locke, Hon. Jeffrey A</p>	62.5	
08/10/2016	Court Reporter Regina Griffin is hereby notified to prepare one copy of the transcript of the evidence of 03/19/2015 09:00 AM Non-Evidentiary Hearing on Suppression, 02/12/2016 09:00 AM Evidentiary Hearing on Suppression	63	
08/10/2016	Court Reporter Ann Marie McDonald is hereby notified to prepare one copy of the transcript of the evidence of 07/19/2016 09:30 AM Jury Waived Trial	64	
08/10/2016	Court Reporter FTR is hereby notified to prepare one copy of the transcript of the evidence of 07/21/2016 09:00 AM Jury Waived Trial	65	
08/10/2016	Letter transmitted to the Appellate Division.	66	
09/16/2016	Court Reporter Regina Griffin is hereby notified to prepare one copy of the transcript of the evidence of 02/10/2016 09:00 AM Evidentiary Hearing on Suppression	67	
09/21/2016	ORDER: Revision of Sentences Imposed on Counts Ten and Twelve	68	
09/22/2016	<p>Issued on this date:</p> <p>Mitt For Sentence - Additional Charges (1 - 15) Sent On: 09/22/2016 10:31:39</p>	69	
09/27/2016	CASE SENT TO BROCKTON		
10/17/2016	\$90.00 Victim Witness Fee Paid	70	
10/25/2016	Jail credit given as per G. L. c. 279, § 33A 586 days credit	71	
01/17/2017	<p>Appeal for review of sentence entered at the Appellate Division: Originating Court: Plymouth County Receiving Court: Suffolk County Criminal Case Number: 1784AD143-PL ;</p>		
02/17/2017	CD of Transcript of 03/19/2015 09:00 AM Non-Evidentiary Hearing on Suppression, 02/10/2016 09:00 AM Evidentiary Hearing on Suppression received from Regina Griffin.	72	

<b>Docket Date</b>	<b>Docket Text</b>	<b>File Ref Nbr.</b>	<b>Image Avail.</b>
06/09/2017	Appeal: Withdrawn by party to the appellate division  Applies To: Johnson, Jamie Bill (Defendant)	73	
11/01/2017	CD of Transcript of 07/19/2016 09:30 AM Jury Waived Trial, 07/21/2016 09:00 AM Jury Waived Trial received from Karen A McGill.		
11/08/2017	Two (2) certified copies of docket entries, original and copy of transcript, two (2) copies of exhibit list of documents, and copy of the notice of appeal, each transmitted to clerk of appellate court	74	
11/08/2017	Notice of completion of assembly of record sent to Clerk of Appeals Court and attorneys for the Commonwealth and defendant	75	
11/15/2017	Notice of Entry of appeal received from the Appeals Court Case was entered in this Court on November 10, 2017	76	

2016  
3-16-16

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT  
NO. 2014-154

COMMONWEALTH

v.

JAMIE JOHNSON,  
Defendant

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION TO SUPPRESS

INTRODUCTION

The defendant, Jamie Johnson ("Johnson"), is charged with five counts of breaking and entering in the nighttime with the intent to commit a felony; four counts of breaking and entering in the daytime with the intent to commit a felony; eight counts of larceny over \$250.00; one count of larceny under \$250.00; and, attempt to commit a crime.

This matter is before the court on Johnson's motion to suppress records obtained by the Marshfield Police as a result of an allegedly illegal search of his probation file. He argues that the search was unconstitutional under the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights. A hearing was held before the undersigned on February 10, 2016 at which the evidence was stipulated to. Accordingly, the following facts are found.

FINDINGS OF FACT

On April 10, 2012, Johnson appeared in the Quincy District Court for a violation of probation hearing. The basis for the surrender hearing was a new charge pending in the Framingham District Court. Johnson waived his right to a hearing and stipulated to the violation. During the

CC: DA  
±D  
3-16-16

hearing, Johnson's attorney asked the court, Coven, J., to extend Johnson's probation and add a condition that he be subject to a Global Position System Monitoring Device ("GPS"). Judge Coven accepted the recommendation and ordered that Johnson's probation be extended and that he be subject to GPS monitoring for an additional six months.

On September 2, 2013, Johnson was arrested near the scene of a housebreak in Randolph. It came to the attention of Randolph Police Detective Gabriel Pantazelos ("Pantazelos") that Johnson had at one time been outfitted with a GPS tracking device. He decided to contact the Commissioner of Probation and obtain records of Johnson's location at various times to determine if they matched up with unsolved housebreaks on the South Shore. To that end, he contacted Marshfield Police Detective Kim Jones ("Jones") and suggested she contact the probation department and look into Johnson's whereabouts. Thereafter, the Marshfield police and two probation officers reviewed the record of Johnson's travels into Marshfield, Hanson and Pembroke. Once this information was developed, Jones cross-referenced it with recent break-ins in those three towns and discovered that Johnson was at the scene of the housbreaks at the time of the alleged breaks. Johnson was then indicted and charged with the aforementioned crimes. Johnson now asks the court suppress the GPS evidence against him on the basis that the warrantless search of his probation file violated his constitutional rights to be free from unreasonable searches.

### **DISCUSSION**

"Warrantless searches are presumptively unreasonable, under both the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights..." *Commonwealth v. Gouse*, 461 Mass. 787, 792 (2012). When a search is conducted

without a warrant, the burden is on the Commonwealth to show that the search "falls within a narrow class of permissible exceptions" to the warrant requirement. *Commonwealth v. Antobenedetto*, 366 Mass. 51, 57 (1974). Here, the first issue is whether a "search" in the constitutional sense occurred at all. I conclude that, in the circumstances of this case, it did not. Under both the Federal and Massachusetts Constitutions, a search in the constitutional sense occurs when the government's conduct intrudes on a person's reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (intrusion into area where person has reasonable expectation of privacy may violate Fourth Amendment; *Commonwealth v. Montanez*, 410 Mass. 290, 301 (1991) (articulating same standard under art. 14). "The measure of the defendant's expectation of privacy is (1) whether the defendant has manifested a subjective expectation of privacy in the object of the search, and (2) whether society is willing to recognize that expectation as reasonable." *Montanez*, supra. See *Katz*, supra (Harlan, J., concurring); *Commonwealth v. Blood*, 400 Mass. 61, 68 (1987). Here, I conclude that Johnson cannot rightly claim he had a subjective expectation of privacy in the GPS record of his whereabouts when it was he, who asked that his whereabouts be monitored via the GPS.

Moreover, society does not appear to recognize that Johnson's expectation of privacy in his probation records is reasonable, at least as far as the police are concerned. G.L. c. 276, § 90 provides:

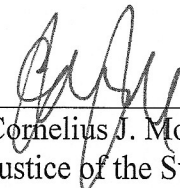
"A probation officer shall not be an active member of the regular police force, but so far as necessary in the performance of his official duties shall, except as otherwise provided, have all the powers of a police officer, and if appointed by the superior court may, by its direction, act in any part of the commonwealth. He shall report to the court, **and his records may at all times be inspected by police officials of the towns of the commonwealth (emphasis supplied)**; provided, that his records in cases arising under sections fifty-two to fifty-nine, inclusive, of chapter one hundred and nineteen shall not be open to inspection without the consent of a justice of his court."

Johnson relies on *Commonwealth v. Connolly*, 454 Mass. 808 (2009) and *Commonwealth v. Lafrance*, 402 Mass. 789 (1988) but such reliance is misplaced. In *Connolly*, 454 Mass. at 833–835, the court held that the installation and use of a GPS device on a criminal defendant's motor vehicle constituted a seizure requiring a warrant for purposes of article 14 of the Massachusetts Declaration of Rights. *Connolly* differs from the case here because there the police were looking to install a GPS system on the suspect's motor vehicle during their investigation into the alleged crimes. Here we have a situation where the defendant is a probationer who has a diminished expectation of privacy but more importantly consented to being monitored by a GPS device.

*Commonwealth v. LaFrance* also differs from the situation where in that case the court held that a search warrant was required under art. 14 to search a probationers home unless a traditional exception to the warrant applies. 402 Mass. at 795. Unlike here, LaFrance did not consent to a warrantless search of his home.

For the reasons discussed above, the defendant's motion to suppress is **DENIED**.

March 16, 2016

  
\_\_\_\_\_  
Cornelius J. Moriarty II  
Justice of the Superior Court



CERTIFICATE OF SERVICE

December 1, 2017

FRANCIS V. KENNEALLY, CLERK  
SUPREME JUDICIAL COURT  
JOHN ADAMS COURTHOUSE  
SUITE 1400  
ONE PEMBERTON SQUARE  
BOSTON, MA 02108

Dear Mister Clerk:

Attached please find the defendant's Application for Direct  
Appellate Review in Appeals Court No. 2017-P-1460.

COMMONWEALTH

*vs.*

JAMIE B. JOHNSON

I hereby certify that on December 1, 2017, I filed the attached  
documents through the Electronic Filing Service Provider for electronic  
service to the following registered User: Assistant District Attorney for  
Plymouth County Christine M. Kiggen at christine.kiggen@state.ma.us.

Timothy St. Lawrence  
BBO #676899

Attorney for Jamie B. Johnson

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